

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, )  
                                 ) Case No.  
Plaintiff,                 )  
                               )  
v.                         )  
                               )  
BANK OF AMERICA CORPORATION, )  
                               )  
Defendant.                 )  
                               )

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**COMPLAINT**

The plaintiff United States of America, with the authorization of the Secretary of the Treasury and at the direction of the Attorney General of the United States, brings this civil action pursuant to 26 U.S.C. § 7405 against defendant Bank of America Corporation, the successor to Merrill Lynch & Company, to recover monies that were erroneously refunded and paid with regard to Merrill Lynch & Company's 1997, 2003, and 2004 federal income tax years, totaling \$1,988,959.44, plus interest thereon, and for its complaint alleges as follows:

**Jurisdiction and Parties**

1.       The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7405.
2.       The defendant Bank of America Corporation ("Bank of America") is a corporation having its principal place of business in Charlotte, North Carolina. Bank of America is the successor by merger to Merrill Lynch & Company. ("Merrill Lynch").

**Related Refund Suit**

3.       On September 13, 2017, Bank of America, as successor by merger to Merrill Lynch, filed a civil action against the United States of America in the Western District of North

Carolina, *Bank of America Corporation v. United States*, No. 3:17-cv-00546-RJC-DSC. In this action, Bank of America filed an amended complaint on May 21, 2018, and a second amended complaint on June 13, 2018. In its second amended complaint, Bank of America seeks refunds of previously paid assessed underpayment interest and additional allowances of overpayments with respect to numerous tax periods, including Merrill Lynch's 2003 and 2004 tax years.

### **Claim for Recovery of Erroneous Refunds**

4. On August 1, 2016, the Internal Revenue Service ("IRS") refunded Merrill Lynch \$4,484.20 for failure-to-pay penalties previously assessed under 26 U.S.C. § 6651(a)(2) for Merrill Lynch's 1997 tax year. That refund was made in error because the refund statute of limitations for that tax period had expired.

5. Also on August 1, 2016, the IRS paid Merrill Lynch \$351,861.14 in overpayment interest for Merrill Lynch's 2003 tax year, and \$1,632,614.10 in overpayment interest for Merrill Lynch's 2004 tax year. These refunds were made in error after the IRS master file system calculated overpayment interest for Merrill Lynch's 2003 and 2004 accounts using incorrect dates for prior credit transfers.

6. In total, on August 1, 2016, the United States erroneously refunded and paid Merrill Lynch \$1,988,959.44 regarding its 1997, 2003, and 2004 tax years.

7. The United States is entitled to recover the amount described in ¶ 6, above, that was erroneously refunded and paid pursuant to 26 U.S.C. §§ 7405(a) and (b).

8. In addition to the \$1,988,959.44 that was erroneously refunded and paid to Merrill Lynch, the United States is entitled to recover interest on that amount pursuant to 26 U.S.C. §§ 7405(c), 6602, and 6621.

9. This action for recovery of amounts erroneously refunded (and interest thereon) is timely under 26 U.S.C. §§ 7405(d) and 6532(b) because it is brought within two years of the making of the refunds at issue.

WHEREFORE, the plaintiff United States of America demands judgment against the defendant as follows:

- A. That the amounts that the IRS refunded and paid to Merrill Lynch with regard to Merrill Lynch's 1997, 2003, and 2004 tax years, totaling \$1,988,959.44, were erroneously refunded and paid;
- B. That the United States is entitled to recover the erroneously refunded and paid \$1,988,959.44, plus interest, under 26 U.S.C. § 7405.
- C. Granting any such further relief that the Court deems just and proper.

Dated: July 26, 2018

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

R. ANDREW MURRAY  
United States Attorney

*/s/ Stephanie Sasarak*  
STEPHANIE SASARAK  
JASON BERGMANN  
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U.S. Department of Justice  
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SS Email: Stephanie.A.Sasarak@usdoj.gov  
JB Email: Jason.Bergmann@usdoj.gov

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys (*Firm Name, Address, and Telephone Number*)  
 Department of Justice, Tax Division, P.O. Box 227, Washington, DC  
 20044  
 202.307.6426

**DEFENDANTS**

Bank of America Corporation

County of Residence of First Listed Defendant \_\_\_\_\_ **Mecklenburg County**  
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
 THE TRACT OF LAND INVOLVED.

Attorneys (*If Known*)  
 Mayer Brown, LLP  
 214 North Tryon Street, Charlotte, NC 28202  
 704.444.3512

**II. BASIS OF JURISDICTION** (*Place an "X" in One Box Only*)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i>          |
| <input type="checkbox"/> 2 U.S. Government Defendant            | <input type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i> |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (*Place an "X" in One Box for Plaintiff and One Box for Defendant*)  
*(For Diversity Cases Only)*

|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (*Place an "X" in One Box Only*)
[Click here for: Nature of Suit Code Descriptions.](#)

| CONTRACT   | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance   | <b>PERSONAL INJURY</b>   | <b>PERSONAL INJURY</b>   | <input type="checkbox"/> 422 Appeal 28 USC 158     | <input type="checkbox"/> 375 False Claims Act                               |
| <input type="checkbox"/> 120 Marine  | <input type="checkbox"/> 310 Airplane                              | <input type="checkbox"/> 365 Personal Injury - Product Liability                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))                       |
| <input type="checkbox"/> 130 Miller Act  | <input type="checkbox"/> 315 Airplane Product Liability            | <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability |  | <input type="checkbox"/> 400 State Reapportionment                          |
| <input type="checkbox"/> 140 Negotiable Instrument                                   | <input type="checkbox"/> 320 Assault, Libel & Slander              | <input type="checkbox"/> 330 Federal Employers' Liability                                  |  | <input type="checkbox"/> 410 Antitrust                                      |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment       | <input type="checkbox"/> 330 Federal Employers' Liability          | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability                    |  | <input type="checkbox"/> 430 Banks and Banking                              |
| <input type="checkbox"/> 151 Medicare Act  | <input type="checkbox"/> 340 Marine                                |  |  | <input type="checkbox"/> 450 Commerce                                       |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 345 Marine Product Liability              |  |  | <input type="checkbox"/> 460 Deportation                                    |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits           | <input type="checkbox"/> 350 Motor Vehicle                         | <input type="checkbox"/> 370 Other Fraud   |  | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits                                     | <input type="checkbox"/> 355 Motor Vehicle Product Liability       | <input type="checkbox"/> 371 Truth in Lending  |  | <input type="checkbox"/> 480 Consumer Credit                                |
| <input type="checkbox"/> 190 Other Contract  | <input type="checkbox"/> 360 Other Personal Injury                 | <input type="checkbox"/> 380 Other Personal Property Damage                                |  | <input type="checkbox"/> 490 Cable/Sat TV                                   |
| <input type="checkbox"/> 195 Contract Product Liability                              | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 385 Property Damage Product Liability                             |  | <input type="checkbox"/> 850 Securities/Commodities/ Exchange               |
| <input type="checkbox"/> 196 Franchise   |  |  |  | <input type="checkbox"/> 890 Other Statutory Actions                        |
| REAL PROPERTY  | CIVIL RIGHTS   | PRISONER PETITIONS   | SOCIAL SECURITY                                    | <input type="checkbox"/> 891 Agricultural Acts                              |
| <input type="checkbox"/> 210 Land Condemnation                                       | <input type="checkbox"/> 440 Other Civil Rights                    | <b>Habeas Corpus:</b>  | <input type="checkbox"/> 861 HIA (1395ff)          | <input type="checkbox"/> 893 Environmental Matters                          |
| <input type="checkbox"/> 220 Foreclosure   | <input type="checkbox"/> 441 Voting                                | <input type="checkbox"/> 463 Alien Detainee  | <input type="checkbox"/> 862 Black Lung (923)      | <input type="checkbox"/> 895 Freedom of Information Act                     |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                                  | <input type="checkbox"/> 442 Employment                            | <input type="checkbox"/> 510 Motions to Vacate Sentence                                    | <input type="checkbox"/> 863 DIWC/DIWW (405(g))    | <input type="checkbox"/> 896 Arbitration                                    |
| <input type="checkbox"/> 240 Torts to Land   | <input type="checkbox"/> 443 Housing/ Accommodations               | <input type="checkbox"/> 530 General   | <input type="checkbox"/> 864 SSID Title XVI        | <input type="checkbox"/> 899 Administrative Procedure                       |
| <input type="checkbox"/> 245 Tort Product Liability                                  | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment     | <input type="checkbox"/> 535 Death Penalty   | <input type="checkbox"/> 865 RSI (405(g))          | Act/Review or Appeal of Agency Decision                                     |
| <input type="checkbox"/> 290 All Other Real Property                                 | <input type="checkbox"/> 446 Amer. w/Disabilities - Other          | <b>Other:</b>  |  | <input type="checkbox"/> 950 Constitutionality of State Statutes            |
|  | <input type="checkbox"/> 448 Education                             | <input type="checkbox"/> 540 Mandamus & Other  |  |   |
|  |  | <input type="checkbox"/> 550 Civil Rights  |  |   |
|  |  | <input type="checkbox"/> 555 Prison Condition  |  |   |
|  |  | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement                    |  |   |
| <b>FEDERAL TAX SUITS</b>   |  |  |  |   |
| <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)          |  |  |  |   |
| <input type="checkbox"/> 871 IRS—Third Party   |  |  |  |   |
|  |  |  |  |   |
| <b>IMMIGRATION</b>   |  |  |  |   |
| <input type="checkbox"/> 462 Naturalization Application                              |  |  |  |   |
| <input type="checkbox"/> 465 Other Immigration Actions                               |  |  |  |   |

**V. ORIGIN** (*Place an "X" in One Box Only*)

- |   |   |  |   |  |  |   |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):  
**26 U.S.C. 7405**

**VI. CAUSE OF ACTION**

Brief description of cause:  
**Suit to Recover Erroneous Refunds**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

1,988,959.44

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No**VIII. RELATED CASE(S)**

IF ANY

(See instructions):

JUDGE Judge Robert J. Conrad, Jr.

DOCKET NUMBER 3:17-cv-00564

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/26/2018

/s/ Stephanie Sasarak

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT APPLIED TO

Case 3:18-cv-00410 Document 1-1 Filed 07/26/18 Page 1 of 2

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
  - Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
  - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
  - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
  - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.